

Attorneys for Plaintiffs UMG Recordings, Inc.; Capitol Records, LLC; Concord Bicycle Assets, LLC; CMGI Recorded Music Assets LLC; Sony Music Entertainment; and Arista Music

UMG RECORDINGS, INC., CAPITOL	}	Case No.: 3:23-cv-06522-MMC
RECORDS, LLC, CONCORD BICYCLE		
ASSETS, LLC, CMGI RECORDED MUSIC		
ASSETS LLC, SONY MUSIC		AMENDED COMPLAINT
ENTERTAINMENT, and ARISTA MUSIC		TRIAL BY JURY DEMAND

Defendants.

1 Plaintiffs UMG Recordings, Inc. (“UMG”), Capitol Records, LLC (“Capitol Records”
2 and with UMG, “Universal”), Concord Bicycle Assets, LLC (“CBA”), CMGI Recorded Music
3 Assets LLC (“CMGI” and with CBA, “Concord”), Sony Music Entertainment (“SME”), and
4 Arista Music (“Arista Music” and with SME, “Sony”) (collectively, “Plaintiffs”), by and through
5 their attorneys, for their Complaint against Defendants Internet Archive, Brewster Kahle
6 (“Kahle”), the Kahle/Austin Foundation (the “Foundation”), George Blood (“Blood”), and
7 George Blood LP (“GBLP”) (collectively, “Defendants”), allege, on personal knowledge as to
8 matters relating to themselves and on information and belief as to all other matters, as set forth
9 below:
10

11 **NATURE OF THE ACTION**

12
13 1. Plaintiffs bring this suit to address Defendants’ massive ongoing violation of
14 Plaintiffs’ rights in protected pre-1972 sound recordings. As part of what Defendants have
15 dubbed the “Great 78 Project,” Internet Archive, Blood, and GBLP have willfully reproduced
16 thousands of Plaintiffs’ protected sound recordings without authorization by copying physical
17 records into digital files. Internet Archive then willfully uploaded, distributed, and digitally
18 transmitted those illegally copied sound recordings millions of times from Internet Archive’s
19 website. Kahle, the Foundation, Blood, and GBLP have knowingly and materially contributed to
20 Internet Archive’s immense infringement.
21

22 2. Defendants’ blatant infringement includes hundreds of thousands of works by
23 some of the greatest artists of the Twentieth Century, including: Frank Sinatra, Thelonious
24 Monk, Ella Fitzgerald, Billie Holiday, Miles Davis, and Louis Armstrong, among many other
25 similarly iconic musicians. Examples of iconic recordings available on the Great 78 Project
26 include “White Christmas” by Bing Crosby, “Sing, Sing, Sing” by Benny Goodman, “Peggy
27 Sue” by Buddy Holly, “Roll Over Beethoven” by Chuck Berry, “I’ve Got the World on a String”
28

1 by Frank Sinatra, “The Christmas Song” by Nat King Cole, “It Don't Mean a Thing (If It Ain't
2 Got That Swing)” by Duke Ellington, and “Milestones” by Miles Davis.

3 3. Defendants attempt to defend their wholesale theft of generations of music under
4 the guise of “preservation and research,” but this is a smokescreen: their activities far exceed
5 those limited purposes. Internet Archive unabashedly seeks to provide free and unlimited access
6 to music for everyone, regardless of copyright. As Defendant Kahle has admitted, Internet
7 Archive’s stated ambition is to “poison the whole web with our 78s.” Association for Recorded
8 Sound Collections, *Mass Digitization of 78 rpm Records*, YOUTUBE (May 11, 2017),
9 [https://www.youtube.com/watch?v=GTH5bYDEonY&ab_channel=AssociationforRecordedSou](https://www.youtube.com/watch?v=GTH5bYDEonY&ab_channel=AssociationforRecordedSoundCollections)
10 [ndCollections](https://www.youtube.com/watch?v=GTH5bYDEonY&ab_channel=AssociationforRecordedSoundCollections) (Brewster Kahle speaking). In truth, Defendants’ malfeasance springs from their
11 disregard for copyright law and the rights of artists and content owners. Internet Archive and the
12 other Defendants have a long history of opposing, fighting, and ignoring copyright law,
13 proclaiming that their zealotry serves the public good. In reality, Defendants are nothing more
14 than mass infringers.

15 4. Nor can Defendants justify their activities as necessary to preserve historical
16 recordings. All of the pre-1972 sound recordings listed on Exhibit A (the “Sound Recordings at
17 Issue”), which is but a small sample of the works Defendants are infringing, are already available
18 for streaming or downloading from numerous services authorized by Plaintiffs. These
19 recordings face no danger of being lost, forgotten, or destroyed.

20 5. Plaintiffs are record companies that produce, manufacture, distribute, sell, and
21 license commercial sound recordings, both in the United States and internationally. Through
22 their enormous investments of money, time, and exceptional creative efforts, Plaintiffs and their
23 respective recording artists have developed and marketed some of the world’s most popular
24 music for generations. Plaintiffs own and/or control exclusive rights in some of the most famous
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1 sound recordings performed by classic artists and contemporary superstars. Their investments
2 and creative efforts have shaped the musical landscape as we know it, both in the United States
3 and around the world.

4 6. In 2018, Congress enacted the Orrin G. Hatch–Bob Goodlatte Music
5 Modernization Act (“Music Modernization Act” or “MMA”), extending federal protection to
6 sound recordings created before February 15, 1972. Pub. L. 115-264; *codified in relevant part at*
7 17 U.S.C. § 1401 *et seq.* The Music Modernization Act provides that, for sound recordings fixed
8 prior to February 15, 1972, anyone who violates any of the exclusive rights under 17 U.S.C.
9 § 106—including the rights of reproduction, distribution, and performing the protected work
10 publicly by means of a digital audio transmission—is subject to an action for infringement
11 pursuant to 17 U.S.C. § 1401(a)(1).
12

13 7. Internet Archive’s “Great 78 Project” refers to 78 rpm records, which are
14 phonographic records designed to be played at a speed of 78 revolutions per minute. The 78 rpm
15 record was the industry-standard record format from the early 1900s until the 1950s. Plaintiffs
16 issued hundreds of thousands of sound recordings in 78 rpm format.
17

18 8. Internet Archive created and now operates the Great 78 Project, a website at
19 <https://great78.archive.org/>. The Great 78 website is a massive, unauthorized, digital record
20 store of recordings. Although Internet Archive describes the Great 78 Project’s goal as “the
21 preservation, research and discovery of 78 rpm records,” the Great 78 Project is actually an
22 illegal effort to willfully defy copyright law on an astonishing scale. Internet Archive has copied
23 hundreds of thousands of physical 78 rpm records into digital files and then posted them on its
24 website, where anyone in the world can download or stream them for free. The Great 78 Project
25 includes hundreds of thousands of recordings from some of the Twentieth Century’s most
26 popular musical artists, and Internet Archive has distributed or streamed those files to users
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28

1 millions of times. To lure customers into this illegal record store, Internet Archive regularly
2 posts advertisements on social media with links to newly added recordings.

3 9. By copying 78 rpm physical records of Plaintiffs' protected sound recordings into
4 digital files, Internet Archive has reproduced without authorization those recordings. By copying
5 those recordings to a server, Internet Archive has further reproduced without authorization
6 Plaintiffs' protected sound recordings. By transferring copies of those files to members of the
7 public, Internet Archive has reproduced and distributed without authorization Plaintiffs'
8 protected sound recordings. By streaming those files to members of the public, Internet Archive
9 has publicly performed by means of a digital audio transmission without authorization Plaintiffs'
10 protected sound recordings.
11

12 10. Internet Archive has not committed this infringement alone. Defendant Kahle is
13 the Founder, chief executive, and Chair of the Board of Internet Archive. He directly oversees
14 and manages Internet Archive's activities, including Internet Archive's infringement of
15 Plaintiffs' works through the Great 78 Project.
16

17 11. Kahle uses his personal Foundation, the Kahle/Austin Foundation, to fund
18 Internet Archive's infringement. Kahle controls the Foundation: he is its President and principal
19 funder. Through Kahle, the Foundation is fully aware of Internet Archive's infringing activity.
20 Each webpage from which Internet Archive has streamed or distributed an infringing sound
21 recording identifies the Foundation as the "Digitizing sponsor."
22

23 12. George Blood is a professional audio engineer with experience in preserving and
24 digitizing physical vinyl records. Blood offers those services through his company, GBLP.
25 Internet Archive hired Blood and GBLP to convert 78 rpm records, including those containing
26 Plaintiffs' protected sound recordings, into digital format. Knowing that Internet Archive
27 intended to upload these digital files to its website for anyone to download or stream for free,
28

Blood and GBLP have digitized hundreds of thousands of recordings. Blood and GBLP employees have been outspoken proponents of the Great 78 Project. Blood's decades of involvement in the music industry have made him and GBLP acutely aware of copyright law.

13. Internet Archive has a long history of opposing copyright laws, and seeking to have old recordings pass into the public domain. Indeed, Internet Archive opposed the Copyright Term Extension Act ("CTEA") that set the current copyright term at life of the author plus seventy years, claiming "[t]he [CTEA] frustrates the Archives' goals of preservation and universal access" *Brief of Amicus Curiae the Internet Archive in Support of Petitioners* at 1, *Eldred v. Ashcroft*, 537 U.S. 186 (2003) (No. 01-618). Internet Archive then filed *amicus* briefs asking the Supreme Court to invalidate the CTEA. *Id.*; *Brief of Amici Curiae the Internet Archive, Prelinger Archives, and Project Gutenberg Literary Archive Foundation in Support of Petitioners, Eldred v. Ashcroft*, 537 U.S. 186 (2003) (No. 01-618). The Supreme Court rejected those claims. *Eldred v. Ashcroft*, 537 U.S. 186 (2003). Internet Archive then filed its own suit challenging the CTEA, which it lost. *Kahle v. Gonzalez*, 487 F.3d 697 (9th Cir. 2007). Having failed repeatedly in Congress and the courts, Internet Archive now chooses to simply willfully disobey the copyright laws of which it is acutely aware.

14. Defendants cannot avoid liability for their willful infringement by claiming fair use. Not a single one of the four factors enumerated in the Copyright Act favors Defendants. Defendants' use of the Sound Recordings at Issue is identical to Plaintiffs' use, Defendants use the works in their entirety, the works are unquestionably the most creative type of works worthy of protection, and Defendants' infringement undermines an existing commercial market for selling downloads and licensing streams of the recordings.

15. This is not the first time Internet Archive has improperly sought to wrap its infringing conduct in the ill-fitting mantle of fair use. A court in this District recently rejected

1 Internet Archive’s attempt to claim fair-use protection for its systematic copying and distribution
2 of copyrighted books. *Hachette Book Group, et al. v. Internet Archive, et al.*, 20-cv-4160 (JGK),
3 2023 WL 2623787 (S.D.N.Y. Mar. 24, 2023).

4 16. The court in *Hachette* recognized that “[w]hat fair use does not allow . . . is the
5 mass reproduction and distribution of complete copyrighted works in a way that does not
6 transform those works and that creates directly competing substitutes for the originals.” *Id.* at
7 *15. That principle applies equally to Defendants’ activities here. Despite *Hachette*’s clear
8 statement of the law, Defendants have continued infringing additional recordings through the
9 Great 78 project in the months since.

10
11 17. Nor do Internet Archive’s efforts to brand itself as a library somehow imbue it
12 with any right to digitize and distribute on a mass scale unauthorized copies of sound recordings.
13 Libraries are trusted institutions that serve the communities that fund them. When Congress
14 contemplated libraries making digital copies under 17 U.S.C. §108, it created targeted limitations
15 to infringement liability—limitations that have no application to Internet Archive’s activities,
16 which result in untold numbers of copies being distributed and performed to the public.

17
18 18. Plaintiffs work hard to ensure the widespread, authorized availability and
19 enjoyment of their recorded music. Plaintiffs currently commercially exploit, and at all relevant
20 times have commercially exploited, all of the Sound Recordings at Issue listed in Exhibit A.
21 Plaintiffs go to great lengths to create and maintain legitimate channels from which customers
22 can lawfully access Plaintiffs’ music. These include streaming services like Spotify, Amazon
23 Music, and Tidal, digital music stores like Apple’s iTunes store, and many others. All of these
24 legitimate channels have agreements with Plaintiffs that authorize the streaming and
25 downloading of Plaintiffs’ recordings and compensate Plaintiffs and, by extension, their
26 recording artists, for the use of Plaintiffs’ recordings.
27
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1 19. When Defendants exploit Plaintiffs' sound recordings without authorization,
2 neither Plaintiffs nor their artists see a dime. Not only does this harm Plaintiffs and the artists or
3 their heirs by depriving them of compensation, but it undermines the value of music.

4 20. Plaintiffs bring this lawsuit to vindicate the rights Congress has granted creators
5 in pre-1972 sound recordings.
6

7 **PLAINTIFFS AND THEIR LEGALLY PROTECTED MUSIC**

8 21. Plaintiffs are engaged in the business of producing, manufacturing, distributing,
9 selling, licensing, and otherwise commercializing sound recordings in the United States and the
10 world through various media. They invest substantial money, time, effort, and talent in creating,
11 advertising, promoting, selling, and licensing unique and valuable sound recordings embodying
12 the performances of their exclusive and world-class recording artists. Plaintiffs are the owners of
13 protected rights in, and/or control exclusive rights with respect to, millions of sound recordings
14 (*i.e.*, recorded music), including by some of the most prolific and well-known recording artists
15 throughout the world.
16

17 22. Plaintiff Sony Music Entertainment ("SME") is a Delaware general partnership,
18 the partners of which are citizens of New York and Delaware. SME's headquarters and principal
19 place of business are located at 25 Madison Avenue, New York, NY 10010. SME is home to
20 some of the world's most distinguished record labels, including Columbia Records, RCA
21 Records, Sony Nashville, Arista Records, and Epic Records, through which it contracts with its
22 world-class artists. Columbia Records and RCA Records are among the world's first record
23 labels, dating back to the late 1800s and early 1900s, respectively.
24

25 23. Plaintiff Arista Music ("Arista Music") is a New York partnership with its
26 principal place of business at 25 Madison Avenue, New York, NY 10010. Arista Music is a
27 subsidiary of SME.
28

24. Plaintiff UMG Recordings, Inc. (“UMG”) is a Delaware corporation with its principal place of business at 2220 Colorado Avenue, Santa Monica, CA 90404.

25. Plaintiff Capitol Records, LLC (“Capitol Records”) is Delaware Limited Liability Company with its principal place of business at 2220 Colorado Avenue, Santa Monica, CA 90404.

26. Plaintiff Concord Bicycle Assets, LLC (“CBA”) is a Delaware limited liability company with its principal place of business at 10 Lea Avenue, Suite 300, Nashville, TN 37210.

27. Plaintiff CMGI Recorded Music Assets, LLC (“CMGI”) is a Delaware limited liability company with its principal place of business at 10 Lea Avenue, Suite 300, Nashville, TN 37210.

28. Plaintiffs own and/or control in whole or in part the exclusive rights in innumerable sound recordings, including the Sound Recordings at Issue listed in Exhibit A, which are an illustrative and non-exhaustive list of some of Plaintiffs’ works infringed by Defendants through the Great 78 Project. Each of the Sound Recordings at Issue has been submitted to and publicly indexed by the U.S. Copyright Office pursuant to 17 U.S.C. § 1401 at least 90 days before they were reproduced, distributed, and/or publicly performed by means of a digital audio transmission by Defendants.

DEFENDANTS

29. Defendant Internet Archive is a not-for-profit corporation organized under the laws of California with its headquarters at 300 Funston Avenue, San Francisco, CA 94118. Internet Archive is registered with the New York Department of State to transact business and accept service of process within the State of New York.

30. Defendant Kahle/Austin Foundation is a Washington nonprofit corporation organized under the laws of Washington with offices at 17 Walnut Street, Rockland, ME 04841 and 513 Simonds Loop, San Francisco, CA 94129-1787.

31. Defendant Brewster Kahle resides in San Francisco, CA. He is the Founder, chief executive, and Chair of the Board of Defendant Internet Archive. He is the President of Defendant Kahle/Austin Foundation.

32. Defendant George Blood, L.P. is a limited partnership organized under the laws of Pennsylvania with its headquarters at 21 W Highland Avenue, Philadelphia, PA 19118, and its principal place of business at 502 W. Office Center Drive, Fort Washington, PA 19034. GBLP provides archival audio and moving image services, including digitizing audio, video, and film media, as well as migrating data from legacy formats.

33. Defendant George Blood resides in or about Philadelphia, PA. Blood is the President and owner of GBLP.

JURISDICTION AND VENUE

34. This is a civil action seeking damages and injunctive relief for infringement under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*, and the Music Modernization Act, 17 U.S.C. § 1401.

35. This Court has subject matter jurisdiction over this action pursuant to 17 U.S.C. §§ 101, *et seq.*, 17 U.S.C. § 1401, and 28 U.S.C. §§ 1331 and 1338, based on federal question jurisdiction.

36. This Court has personal jurisdiction over Internet Archive pursuant to § 302 of New York's Civil Practice Law & Rules. Internet Archive is registered with the New York Department of State to transact business and accept service of process within the State of New York. Internet Archive currently transacts business within the State of New York and this

1 District by, *inter alia*, distributing digital copies of sound recordings (and other content) to New
2 York residents over the Internet, performing sound recordings publicly by means of a digital
3 audio transmission to New York residents over the Internet, and soliciting and accepting
4 contributions from New York residents to further its digitization, distribution, and public
5 performance sound recordings.
6

7 37. Defendants have harmed Plaintiffs in this District because Internet Archive has
8 copied and uploaded Plaintiffs' protected sound recordings to its website, including each of the
9 Sound Recordings at Issue, without permission, and Internet Archive currently distributes and
10 performs publicly by means of a digital audio transmission Plaintiffs' protected sound recordings
11 to users of its website in New York. Since the beginning of 2020, New York residents have
12 downloaded or streamed recordings from the Great 78 Project more than 500,000 times, making
13 New York the state with the second-most total downloads and streams in that time. These
14 infringements have harmed Plaintiffs in New York by displacing New York residents' legitimate
15 sales and streams, thereby depriving Plaintiffs of revenue in New York. Further, the large
16 volume of downloads and streams in New York indicates that Internet Archive knew or should
17 reasonably have expected its conduct to have consequences in New York. By knowing about
18 and materially contributing to Internet Archive's infringements that have harmed Plaintiffs in
19 New York, Defendants Kahle, the Foundation, Blood, and GBLP have also harmed Plaintiffs in
20 New York, and knew or should reasonably expected that their contributions to Internet Archive's
21 infringements would have consequences in New York.
22

23
24 38. Internet Archive derives substantial revenue from interstate and international
25 commerce. According to public filings, Internet Archive has received over \$100 million in the
26 last ten years from a national network of supporters, at least some of whom are based in New
27 York, and from the services it sells to clients in New York and all over the United States.
28

Internet Archive has also received substantial donations of record collections, from donors nationwide and internationally.

39. Kahle derives substantial revenue from interstate and international commerce. Kahle became wealthy by founding and selling two companies during the 1990s dot-com boom: Wide Area Information Server (WAIS), which was sold to America OnLine, and Alexa Internet, which was sold to Amazon.com in 1999. Since then, Kahle has derived substantial revenue from a significant portfolio of investments, including the securities of national and international companies. Further, Kahle, as Founder, chief executive, and Chair of the Board of Internet Archive, shares in the decision-making and execution of, and exercises control over, Internet Archive's transacting business in New York.

40. The Foundation derives substantial revenue from interstate commerce and international commerce. According to public filings, the Foundation has generated tens of millions of dollars in revenue from investments in securities of national and international companies, including some based in New York. Further, while the Foundation is organized under the laws of Washington, it has received tens of millions of dollars in contributions from donors located outside Washington, including from the Kahle Austin Revocable Trust in San Francisco, CA.

41. GBLP derives substantial revenue from interstate commerce and international commerce. GBLP's website states: "George Blood LP is a *nationally recognized* provider of archival audio and moving image preservation. . . . [W]e meet the needs of our various clients in libraries, museums, archives, corporations, and private collections *across the country*." *Careers*, GEORGE BLOOD LP, <https://www.georgeblood.com/careers> (last visited Aug. 10, 2023) (emphasis added). In addition, GBLP, which is located in Pennsylvania, has received hundreds

of thousands of dollars in revenue from Internet Archive, which is located in California, in exchange for GBLP's digitization services on the Great 78 Project.

42. Blood derives substantial revenue from interstate commerce and international commerce. GBLP's website states: "For more than 35 years George Blood has been delivering professional audio services to musicians, composers, universities, libraries, corporations, and individual clients, *both nationally and internationally*." *Experience*, GEORGE BLOOD LP, <https://www.georgeblood.com/experience> (last visited Aug. 10, 2023) (emphasis added). Further, as the principal of GBLP, Blood has derived substantial revenue from the interstate fees GBLP has collected for its digitization services on the Great 78 Project.

43. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2) as a substantial part of the events or omissions giving rise to these claims occurred in this District when tens of thousands of individuals in this District downloaded and/or streamed Plaintiffs' protected sound recordings from Internet Archive.

FACTUAL BACKGROUND

A. In 2018, Congress extended federal protection to pre-1972 sound recordings.

44. Prior to 2018, sound recordings created before February 15, 1972, while protected under state law, were not eligible for federal copyright protection. To address that lacuna in federal copyright law, Congress enacted the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, which went into effect on October 11, 2018. 17 U.S.C. § 1401 *et seq.* The Music Modernization Act provides that, for sound recordings fixed before February 15, 1972 ("pre-1972 sound recordings"), anyone who violates any of the exclusive rights under 17 U.S.C. § 106—including the rights of reproduction, distribution, and performing the work publicly by means of a digital audio transmission—is subject to the remedies the Copyright Act provides

1 under sections 502 through 505 and 1203 to the same extent as an infringer of copyright. 17
2 U.S.C. § 1401(a)(1).

3 45. The Music Modernization Act directed the Copyright Office to create a process
4 for rightsholders to submit schedules of pre-1972 sound recordings to the Copyright Office so
5 that the Copyright Office can publicly index the recordings. 17 U.S.C. § 1401(f)(5)(A)(ii). Once
6 the Copyright Office indexes a work, a rightsholder who sues for infringement of that work can
7 recover statutory damages and attorneys' fees pursuant to 17 U.S.C. §§ 504 and 505. 17 U.S.C.
8 § 1401(f)(5)(A)(i). All of the Sound Recordings at Issue have been submitted to the Copyright
9 Office and publicly indexed.

11 46. The Music Modernization Act creates a safe harbor that potentially immunizes
12 otherwise infringing uses of pre-1972 sound recordings if certain conditions are met.
13 Noncommercial use of a pre-1972 sound recording is not infringing if (i) the rightsowner is not
14 commercially exploiting the recording, (ii) the user has made a good-faith, reasonable search to
15 determine whether the recording is being commercially exploited, (iii) the user files a notice of
16 noncommercial use with the Copyright Office, and (iv) within 90 days of the user's notice, the
17 rightsowner does not file a notice with the Copyright Office opting out of the noncommercial
18 use. 17 U.S.C. § 1401(c)(1)(A)-(C). The Music Modernization Act further protects "[a] person
19 engaging in a noncommercial use of a sound recording otherwise permitted under this subsection
20 who establishes that the person made a good faith, reasonable search under paragraph (1)(A)
21 without finding commercial exploitation of the sound recording by or under the authority of the
22 rights owner" 17 U.S.C. § 1401(c)(4)(A).

1 **B. Internet Archive built a mass infringement platform that flouts the Music**
2 **Modernization Act.**

3 47. Brewster Kahle founded Internet Archive in 1996. Internet Archive proclaims
4 that its “mission is to provide Universal Access to All Knowledge.” *About the Internet Archive*,
5 INTERNET ARCHIVE, <https://archive.org/about/> (last visited Aug. 10, 2023). Internet Archive
6 provides a number of services not at issue in this action, including its Wayback Machine and
7 digitization of public domain materials.

8 48. The Great 78 Project involves creating digital copies of sound recordings fixed in
9 physical 78 rpm records. Using the services of Blood and GBLP, Internet Archive copies entire
10 sound recordings into various digital formats.

11 49. Internet Archive then uploads those digital copies to the Great 78 Project website.
12 Each recording has a separate webpage on the Great 78 Project website, showing the record
13 company that released the sound recording, digitizing sponsor (always the Foundation),
14 contributor (always Internet Archive), uploader, and other metadata. Each webpage has a built-
15 in audio player that anyone can use to play the recording an unlimited number of times for free.
16 Each webpage has links that anyone can use to download the recording an unlimited number of
17 times for free. All of the Sound Recordings at Issue were digitized by Blood and GBLP and
18 uploaded to the Great 78 Project website by GBLP and Internet Archive. The copies of the
19 Sound Recordings at Issue that Internet Archive reproduces, distributes, and performs publicly
20 by means of a digital audio transmission are the same recordings Plaintiffs offer.

21 50. The screenshots below show an example of a Great 78 Project webpage for the
22 sound recording, “White Christmas,” recorded by Bing Crosby, originally released in 1942 by
23 Decca Records, which is now part of Plaintiff UMG:
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White Christmas
by Irving Berlin; Bing Crosby; Ken Darby Singers; John Scott Trotter and his Orchestra
Decca (18429 A)

Publication date: 1942-05-29
Topics: 78rpm, Christmas
Digitizing sponsor: Kahle/Austin Foundation
Contributor: Internet Archive
Language: English

From Paramount Picture "Holiday Inn"; Vocal with Chorus and Orchestra.

Digitized from a shellac record, at 78 revolutions per minute. Four stylis were used to transfer this record. They are 3.8 mil truncated conical, 2.3 mil truncated conical, 2.8 mil truncated conical, 3.3 mil truncated conical. These were recorded flat and then also equalized with NAB.

The preferred version suggested by an audio engineer at George Blood, L.P. is the equalized version recorded with the 3.3 mil truncated conical stylus, and has been copied to have the more friendly filename.

Matrix number: DLA3009B
Catalog number: 18429 A

Notes

The recording on the other side of this disc was also [digitized](#).

15,786 Views
43 Favorites
[2 Reviews](#)

DOWNLOAD OPTIONS

24BIT FLAC	1 file
INTERMEDIATE ASR JSON	1 file
ITEM IMAGE	1 file
ITEM TILE	1 file
SUBRIP	1 file
TIFF	1 file
TORRENT	1 file
VBR M3U	1 file

White Christmas by Bing Crosby, INTERNET ARCHIVE, https://archive.org/details/78_white-christmas_irving-berlin-bing-crosby-ken-darby-singers-john-scott-trotter-and_gbia0000275a.

51. The hallmark of the Great 78 Project is giving music away for free. From early on, Internet Archive stated that “[t]he Great 78 Project will collect and digitize over 400,000 digitized 78 rpm recordings to make them *publicly available*.” Brewster Kahle, *Dreaming of Semantic Audio Restoration at a Massive Scale*, INTERNET ARCHIVE (Jun. 3, 2017), <https://blog.archive.org/2017/06/03/dreaming-of-semantic-audio-restoration-at-a-massive-scale/> (emphasis added).

52. Internet Archive actively advertises the ability to freely stream and download sound recordings from its collections. Fundamental to the Great 78 Project is its X (formerly Twitter) account that tweets a link to a different recording every hour. *See thegreat78project* (@great78project), X, <https://twitter.com/great78project>. The X account does not discuss historical facts associated with the recordings; it simply advertises that the recordings are freely available to download or stream and encourages users to go and obtain them.

53. Internet Archive has also recently added an account on its server hosted on the Mastodon social networking platform that similarly posts a link to a Great 78 Project recording every hour. *See thegreat78project* (great78@mastodon.archive.org), MASTODON, <https://mastodon.archive.org/@great78>.

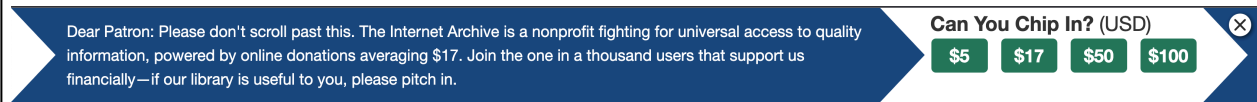
54. Leaders of the Great 78 Project, including Brewster Kahle and George Blood, have spoken at conferences, appeared on podcasts and radio shows, and given interviews to journalists in order to publicize the Great 78 Project and the wide public availability of protected sound recordings the Great 78 Project provides.

55. As part of the Great 78 Project, Internet Archive solicits collectors to donate their record collections, with the goal of making as many recordings publicly available as possible. The Great 78 Project homepage explicitly requests donations of 78 rpm records and links to a page with donation instructions. *See Donate 78s*, INTERNET ARCHIVE, <https://great78.archive.org/donate-78s/> (last visited Aug. 10, 2023).

56. Internet Archive also solicits monetary donations. The Internet Archive website has a “Donate” link that leads to a webpage where Brewster Kahle states, “We rely on the generosity of individuals like you to pay for servers, staff, and preservation projects. If you can’t imagine a future without the Internet Archive, please consider supporting our work. . . . If you find our site useful, please chip in! Your support will help us build the web we deserve.”

Brewster Kahle, *A Message from Internet Archive Founder, Brewster Kahle*, INTERNET ARCHIVE, <https://archive.org/donate> (last visited Aug. 10, 2023).

57. Internet Archive actively uses the music it offers as part of the Great 78 Project to attract new visitors from whom it can solicit donations. When a new user visits any page on the Great 78 website, Internet Archive displays the following banner at the top of the page:



58. When the Music Modernization Act’s enactment made clear that unauthorized copying, streaming, and distributing pre-1972 sound recordings is infringing, Internet Archive made no changes to its activities. Internet Archive did not obtain authorization to use the recordings on the Great 78 Project website. It did not remove any recordings from public access. It did not slow the pace at which it made new recordings publicly available. It did not change its policies regarding which recordings it would make publicly available.

59. Internet Archive has not filed any notices of non-commercial use with the Copyright Office. Accordingly, the safe harbor set forth in the Music Modernization Act is not applicable to Internet Archive’s activities.

60. Internet Archive knew full well that the Music Modernization Act had made its activities illegal under Federal law. When the Music Modernization Act went into effect, Internet Archive posted about it on its blog. Jeff Kaplan, *The Music Modernization Act is now law which means some pre-1972 music goes public*, INTERNET ARCHIVE (Oct. 15, 2018), <https://blog.archive.org/2018/10/15/the-music-modernization-act-is-now-law-which-means-some-music-goes-public/>. The blog post stated that “the MMA means that libraries can make *some* of these older recordings freely available to the public *as long as we do a reasonable search to determine that they are not commercially available.*” *Id.* (emphasis added). The blog

1 post further noted that the MMA “expands an obscure provision of the library exception to US
 2 Copyright Law, Section 108(h), to apply to all pre-72 recordings. *Unfortunately 108(h) is*
 3 *notoriously hard to implement.*” *Id.* (emphasis added). Brewster Kahle tweeted a link to the
 4 blog post. Brewster Kahle (@brewster_kahle), TWITTER (Oct. 15, 2018 11:26 AM),
 5 https://twitter.com/brewster_kahle/status/1051856787312271361.
 6

7 61. Kahle delivered a presentation at the Association for Recorded Sound
 8 Collection’s 2019 annual conference titled, “Music Modernization Act 2018. How it did not go
 9 wrong, and even went pretty right.” In the presentation, Kahle stated that, “We Get pre-1972
 10 out-of-print to be ‘Library Public Domain’!”. The presentation shows that Kahle, and, by
 11 extension, Internet Archive and the Foundation, understood how the Music Modernization Act
 12 had changed federal law and was aware the Music Modernization Act had made it unlawful
 13 under federal law to reproduce, distribute, and publicly perform pre-1972 sound recordings.
 14

15 62. Despite knowing that the Music Modernization Act made its conduct infringing
 16 under federal law, Internet Archive ignored the new law and plowed forward as if the Music
 17 Modernization Act had never been enacted.

18 **C. Defendants’ infringement is of staggering scale.**

19 63. The scope of Defendants’ infringement is massive and continually growing. The
 20 Great 78 Project contains more than 400,000 works digitized by Blood and GBLP. Those works
 21 have been downloaded or streamed millions of times. Internet Archive makes newly available
 22 every month thousands of additional recordings digitized by Blood and GBLP. Internet
 23 Archive’s stated goal is to digitize and make available for free *every* 78 rpm recording ever
 24 created: George Blood has stated that “[t]his community effort seeks to digitize all 3 million
 25 minted sides (~3 minute recordings) published on 78 rpm discs from about 1898 to the 1950s.”
 26 George Blood, *Boston Public Library - Boston Public Library Transfers Sound Archives*
 27
 28

1 *Collection to Internet Archive for Digitization, Preservation, and Public Access*, GEORGE BLOOD
 2 (Oct. 16, 2017), [https://www.georgeblood.com/news/2017/10/16/boston-public-library-boston-](https://www.georgeblood.com/news/2017/10/16/boston-public-library-boston-public-library-transfers-sound-archives-collection-to-internet-archive-for-digitization-preservation-and-public-access)
 3 [public-library-transfers-sound-archives-collection-to-internet-archive-for-digitization-](https://www.georgeblood.com/news/2017/10/16/boston-public-library-boston-public-library-transfers-sound-archives-collection-to-internet-archive-for-digitization-preservation-and-public-access)
 4 [preservation-and-public-access](https://www.georgeblood.com/news/2017/10/16/boston-public-library-boston-public-library-transfers-sound-archives-collection-to-internet-archive-for-digitization-preservation-and-public-access).

5 64. The recordings available on the Great 78 Project include some of the most
 6 popular and famous recordings ever made. “White Christmas,” by Bing Crosby, is widely
 7 regarded as the best-selling single in the history of recorded music, having sold more than 50
 8 million copies. “White Christmas” was originally released in 1942 by Decca Records, which is
 9 now part of Plaintiff UMG. It is available on the Great 78 project in several forms, from where it
 10 has been downloaded or streamed tens of thousands of times. *See, e.g., White Christmas by Bing*
 11 *Crosby*, INTERNET ARCHIVE, [https://archive.org/details/78_white-christmas_irving-berlin-bing-](https://archive.org/details/78_white-christmas_irving-berlin-bing-crosby-ken-darby-singers-john-scott-trotter-and_gbia0000275a)
 12 [crosby-ken-darby-singers-john-scott-trotter-and_gbia0000275a](https://archive.org/details/78_white-christmas_irving-berlin-bing-crosby-ken-darby-singers-john-scott-trotter-and_gbia0000275a).

13 14 65. “Young-At-Heart,” a classic Frank Sinatra 1953 recording, sold more than one
 15 million copies in 1953-54. That recording of “Young At Heart” was originally released by
 16 Plaintiff Capitol Records. It is available on the Great 78 Project, from where it has been
 17 downloaded or streamed more than 2,300 times. *Young-at-Heart* by Frank Sinatra; Nelson
 18 Riddle; INTERNET ARCHIVE, [https://archive.org/details/78_young-at-heart_frank-sinatra-nelson-](https://archive.org/details/78_young-at-heart_frank-sinatra-nelson-riddle-johnny-richards-carolyn-leigh_gbia0012315a)
 19 [riddle-johnny-richards-carolyn-leigh_gbia0012315a](https://archive.org/details/78_young-at-heart_frank-sinatra-nelson-riddle-johnny-richards-carolyn-leigh_gbia0012315a) (last visited Aug. 10, 2023).

20 21 66. “Saturday Night (is the Loneliest Night of the Week)” was a hit for Frank Sinatra
 22 in 1945. The recording was originally released by Columbia Records, which is now part of
 23 Sony. It is available on the Great 78 Project, from where it has been downloaded or streamed
 24 hundreds of times. *Saturday Night (Is The Loneliest Night In The Week)*, INTERNET ARCHIVE,
 25 [https://archive.org/details/78_saturday-night-is-the-loneliest-night-in-the-week_frank-sinatra-](https://archive.org/details/78_saturday-night-is-the-loneliest-night-in-the-week_frank-sinatra-axel-stordahl-cah_gbia0017538a)
 26 [axel-stordahl-cah_gbia0017538a](https://archive.org/details/78_saturday-night-is-the-loneliest-night-in-the-week_frank-sinatra-axel-stordahl-cah_gbia0017538a) (last visited Aug. 10, 2023); *Saturday Night (Is The Loneliest*
 27
 28

1 *Night In The Week*), INTERNET ARCHIVE, https://archive.org/details/78_saturday-night-is-the-loneliest-night-in-the-week_frank-sinatra-axel-stordahl-s_gbia0263662b (last visited Aug. 10,
2 2023).

3
4 67. “Potato Head Blues,” recorded by Louis Armstrong and His Hot Sevens, has been
5 described by critics as Armstrong’s “greatest single recording and “one of the most astonishing
6 accomplishments in all of twentieth century music.” Thomas Ward, *Potato Head Blues*,
7 ALLMUSIC, <https://www.allmusic.com/song/potato-head-blues-mt0008812467?1691102565959>
8 (last visited Aug. 10, 2023). It was originally issued in 1927 by Okeh Records, which is now
9 part of Plaintiff SME. It is available on the Great 78 Project, from where it has been downloaded
10 and streamed hundreds of times. *Potato Head Blues by Louis Armstrong and His Hot Seven*,
11 INTERNET ARCHIVE, https://archive.org/details/78_potato-head-blues_louis-armstrong-and-his-hot-seven-armstrong_gbia0261792a (last visited Aug. 10, 2023).

12
13 68. “Monk’s Dream,” is a seminal 1952 recording by the Thelonius Monk Trio. It
14 was originally issued by Prestige Records, which is now a part of Plaintiff CMGI. It is available
15 on the Great 78 Project, from where it has been downloaded and streamed hundreds of times.
16 *Monk’s Dream by the Thelonius Monk Trio*, INTERNET ARCHIVE,
17 https://archive.org/details/78_monks-dream_thelonious-monk-trio-thelonius-monk-art-blakey-gary-mapp-monk_gbia0254273b (last visited Aug. 10, 2023).

18
19 69. All of these all of these recordings are commercially available for downloading
20 and streaming on numerous popular platforms, such as Spotify and the iTunes store.

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24 **D. Brewster Kahle oversees and directs Internet Archive’s infringement.**

25 70. As Internet Archive’s Founder, chief executive, and Chair of the Board, Kahle has
26 been intimately involved in Internet Archive’s infringing conduct. According to Internet
27 Archive’s IRS filings, Kahle works 40 hours per week for Internet Archive.

71. Kahle's blog posts reveal his deep involvement in the Great 78 Project's operations. At the beginning of the Great 78 Project, Kahle described himself as "creating" the Great 78 Project. Brewster Kahle, *Collector or Digital Librarian?* (Jun. 9, 2017), <https://brewster.kahle.org/2017/06/09/collector-or-digital-librarian/>. A news article at the time described the Great 78 Project as Kahle's "brainchild." Will Pritchard, *How The Great 78 Project is saving half a million songs from obscurity*, THE VINYL FACTORY, <https://thevinylfactory.com/features/great-78-project-archive-interview/> (Aug. 18, 2017). Kahle wrote about the Great 78 Project: "So what is this? A reference collection? A collector's dream? A discovery radio station? The soundtrack of the early 20th century? All Good. All Fun." Brewster Kahle, *The Great 78 Project*, <https://brewster.kahle.org/2017/06/09/the-great-78-project/> (Jun. 9, 2017).

72. Kahle does not limit his involvement to high-level guidance, but participates directly in the Great 78 Project's operations. For instance, in 2022, Kahle posted on the Internet Archive's blog asking for advice on how to identify duplicates in the Great 78 Project's archive. Brewster Kahle, *Pythonistas: Up for quick hack to test Dedup'ing 78rpm records using document clustering?*, INTERNET ARCHIVE (Oct. 2, 2022), <https://brewster.kahle.org/2022/10/02/pythonistas-up-for-quick-hack-to-test-deduping-78rpm-records-using-document-clustering/>. In 2020, Kahle posted that Internet Archive was using a database called Discogs to bulk-import release dates for 78 rpm records in the Internet Archive's collection. Brewster Kahle, *Discogs Thank You! A commercial community site with bulk data access*, INTERNET ARCHIVE (Dec. 6, 2020) <https://blog.archive.org/2020/12/06/discogs-thank-you-a-commercial-community-site-with-bulk-data-access/>. In 2019, Kahle posted on the Internet Archive's blog about correcting errors in the metadata for sound recordings. Brewster Kahle, *Correct Metadata is Hard: a Lesson from the Great 78 Project*, INTERNET ARCHIVE (Jul. 14,

2019), <https://blog.archive.org/2019/07/14/correct-metadata-is-hard-lessons-from-the-great-78-project/>.

73. Kahle regularly promotes and advocates for the Great 78 Project. For example, on July 21, 2021 he tweeted, “More 78's to play from our library! Uploading 9,000+ right now,” https://twitter.com/brewster_kahle/status/1405292024106868740, and responded to a query that “The @internetarchive will pay for shipping, preservation, digitization, and hosting . . .” . Brewster Kahle (@brewster_kahle), TWITTER (Jun. 16, 2021 6:31 PM), https://twitter.com/brewster_kahle/status/1405666382339973125. On Sept. 16, 2020, Kahle quoted a tweet from the Great 78 Project Twitter feed, adding, “[a]nd please donate more 78's if you possibly can, we are running out.” Brewster Kahle (@brewster_kahle), TWITTER (Sep. 16, 2020 9:30 PM), https://twitter.com/brewster_kahle/status/1306405073019236357. In response to a question, he stated, “We want all 78’s we do not already have (or better copies of what we have).” Brewster Kahle (@brewster_kahle), TWITTER (Sep. 16, 2020 10:49 PM), https://twitter.com/brewster_kahle/status/1306425127878483968.

74. Kahle has actively advocated against the copyright laws for years. Kahle has complained that “[c]opyright was twisted in a rewriting of the law in 1976 to put much of the twentieth century into a legal jail.” Brewster Kahle and Ana Parejo Vadillo, *The Internet Archive: An Interview with Brewster Kahle*, 19 INTERDISCIPLINARY STUDIES IN THE LONG NINETEENTH CENTURY 21 at 4 (2015), available at <https://19.bbk.ac.uk/article/id/1522>. Kahle and Internet Archive have filed meritless litigation seeking to evade binding Supreme Court precedent and undo congressionally enacted copyright law. See *Kahle v. Gonzalez*, 487 F.3d 697 (9th Cir. 2007) (affirming dismissal of complaint seeking to declare Copyright Term Extension Act unconstitutional).

E. The Kahle/Austin Foundation sponsors Internet Archive's infringement.

75. Kahle established the Foundation as his and his wife's preferred vehicle for funding his favored projects, including Internet Archive. The majority of the Foundation's funds come directly or indirectly from Kahle. For example, in 2019, the most recent year for which the Foundation's tax filings are publicly available, the Foundation received contributions of \$17,588,990, almost all of which came from the Kahle Austin Revocable Trust, a trust controlled and funded by Kahle. Similarly, in 2016, the Foundation received contributions of \$38,721,865, almost all of which again came from that same trust controlled and funded by Kahle.

76. At Kahle's direction, the Foundation used the funds Kahle had contributed to sponsor the Internet Archive's massive and growing infringement. The Foundation donated money to Internet Archive that Internet Archive used to pay costs in furtherance of its infringement, such as GBLP's fees for digitizing Plaintiffs' works and employees who uploaded recordings to the website. Internet Archive's webpage for each recording at issue highlights the Foundation's critical contribution by naming the Foundation as the "Digitizing sponsor." By virtue of Kahle's central role at both Internet Archive and the Foundation, the Foundation knew Internet Archive's activities were infringing and knew that Internet Archive was using the Foundation's funds to support infringement.

F. Defendants knew their conduct was infringing.

77. Defendants knew full well their conduct was infringing. In 2020, Kahle acknowledged that building an audio library "is doable. Except that it's a very heavily litigated area," and that "[e]xactly how to do the distribution on the commercial materials, we haven't quite figured out." Long Now Foundation, *Universal Access to All Knowledge*, YOUTUBE, https://www.youtube.com/watch?v=RV_ALIJGU_c&ab_channel=LongNowFoundation (May 25, 2020) (Brewster Kahle speaking).

1 78. When Internet Archive copied and uploaded sound recordings to its website, it
2 also copied the labels for each of the 78 rpm records and uploaded those labels as well. Those
3 labels typically bear the name of the record company which released the sound recording. By
4 looking at these labels, Internet Archive could determine that a record company owned the
5 recordings at issue.

6
7 79. Defendants were notified that their conduct was infringing. On June 10, 2020,
8 Senator Thom Tillis, then-Chair of the Senate Subcommittee on Intellectual Property, wrote to
9 Kahle and Internet Archive that Internet Archive’s “ma[king] recordings available for free
10 through unlimited streaming and download . . . raise numerous potential issues of copyright
11 infringement.” Letter from Sen. Thom Tillis to Brewster Kahle (Jun. 10, 2020) 2. Senator Tillis
12 explained that Internet Archive’s “sound recording projects do not appear to comply with the
13 relevant portions of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act (MMA), which
14 deals only with pre-1972 sound recordings and would not allow for streaming or downloading.”
15 *Id.* Senator Tillis added that “I am concerned that the Internet Archive thinks that it—not
16 Congress—gets to determine the scope of copyright law. . . . Internet Archive seems to be
17 daring copyright owners to sue to enforce their rights . . .” *Id.*

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19 80. Soon after, on July 22, 2020, the Recording Industry for America (“RIAA”) also
20 wrote to Kahle and Internet Archive. The RIAA is a trade association whose members,
21 including some of the Plaintiffs, create, manufacture and/or distribute sound recordings
22 representing the great majority of all legitimate recorded music consumption in the United
23 States. The RIAA informed Kahle that “you and Internet Archive (collectively ‘you’) have
24 reproduced thousands of sound recordings in which RIAA member companies own or
25 exclusively control copyrights, and have made those recordings available to the public for
26 unrestricted download and streaming, all without the consent of the rights owners. . . . Your
27
28

1 unauthorized reproduction, distribution and public performance of these recordings is a plain
2 violation of the RIAA member companies' rights under the [MMA], 17 U.S.C. § 1401, and
3 constitutes nothing less than piracy on a massive scale." Letter from Ken Doroshow to Brewster
4 Kahle (July 22, 2020) 1-2. The RIAA demanded that Kahle and Internet Archive immediately
5 cease and desist from their infringement. *Id.* at 3.

6
7 81. Internet Archive ignored this demand. On August 21, 2020, Brewster Kahle
8 responded to the RIAA. Kahle did not—because he could not—dispute the underlying facts that
9 Internet Archive has reproduced thousands of sound recordings in which RIAA member
10 companies own or exclusively control federally protected exclusive rights and made those
11 recordings available to the public for unrestricted download and streaming. Instead, Kahle tried
12 to excuse this infringement by arguing that “most of the recordings in [the Great 78] collection
13 are obscure and rare,” as if making available obscure and rare recordings Plaintiffs own were
14 permissible or could excuse making available popular ones. Email from Brewster Kahle to Ken
15 Doroshow (August 21, 2020). Kahle also disingenuously claimed, “to the extent that there may
16 be particular recordings that your members may prefer to have removed from public access
17 because they are currently being commercially exploited, we work with them according to
18 standard procedures.” *Id.* This gets the MMA's burdens backwards—as Kahle well knows, the
19 MMA requires that the **user** determine if a work is being commercially exploited, not that the
20 **owner** proactively identify works to the user. 17 U.S.C. § 1401I(1)(A)-(C). The MMA is not a
21 notice-and-takedown statute.

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23
24 82. Internet Archive's conduct evinces its bad faith. The RIAA's letter specifically
25 cited Internet Archive's infringement of “well-known and commercially available recordings by
26 such legendary artists as Elvis Presley, Duke Ellington, Billie Holiday, Ray Charles, Chuck
27 Berry, Frank Sinatra, Ella Fitzgerald, Louis Armstrong, and Hank Williams, to name just a few.”
28

1 Letter from Ken Doroshow to Brewster Kahle (July 22, 2020) 1. Undermining its claim that it
2 works with rightsowners to remove from public access recordings that are currently being
3 commercially exploited, Internet Archive did not remove from public access any recordings by
4 any of the artists cited in the RIAA's letter.

5 83. In 2021, Internet Archive tweeted that 80% of the 250,000 sides digitized so far
6 "were produced by the 'Big 5' labels": Decca, Columbia, Victor, RCA Victor, and Capitol.
7 Internet Archive (@internetarchive), TWITTER (Apr. 25, 2021 5:13 PM),
8 <https://twitter.com/internetarchive/status/1386428082332921857>. All five are well-known labels
9 whose recordings are owned by the Plaintiffs in this case.
10

11 84. Internet Archive also maintains a collection on its website titled, "Unlocked
12 Recordings." Internet Archive describes this collection as "Recordings made available under the
13 Music Modernization Act. A reasonable search has been conducted to determine that these items
14 are not commercially available." *Unlocked Recordings*, INTERNET ARCHIVE,
15 <https://archive.org/details/unlockedrecordings> (last visited Aug. 10, 2023). Internet Archive
16 makes all of these recordings available for downloading and streaming.
17

18 85. Internet Archive's claim about the Unlocked Collection that "[a] reasonable
19 search has been conducted to determine that these items are not commercially available" is
20 demonstrably false. On the first page of the Unlocked Recordings collection alone, Internet
21 Archive displays recordings by Paul McCartney, Jimi Hendrix, Nina Simone, and Frank
22 Sinatra. *See Ram by Paul and Linda McCartney*, INTERNET ARCHIVE,
23 https://archive.org/details/lp_ram_paul-linda-mccartney (last visited Aug. 10, 2023); *Jimi*
24 *Hendrix by Jimi Hendrix*, INTERNET ARCHIVE, [https://archive.org/details/lp_jimi-hendrix_jimi-](https://archive.org/details/lp_jimi-hendrix_jimi-hendrix)
25 *hendrix* (last visited Aug. 10, 2023); *I Put A Spell On You by Nina Simone*, INTERNET ARCHIVE,
26 https://archive.org/details/lp_i-put-a-spell-on-you_nina-simone (last visited Aug. 10, 2023);
27
28

1 *Sings Days Of Wine And Roses, Moon River, And Other Academy Award Winner” by Frank*
 2 *Sinatra; Nelson Riddle*, INTERNET ARCHIVE, [https://archive.org/details/lp_sings-days-of-wine-](https://archive.org/details/lp_sings-days-of-wine-and-roses-moon-river-an_frank-sinatra-nelson-riddle)
 3 [and-roses-moon-river-an_frank-sinatra-nelson-riddle](https://archive.org/details/lp_sings-days-of-wine-and-roses-moon-river-an_frank-sinatra-nelson-riddle) (last visited Aug. 10, 2023). Any
 4 reasonable search would have found that these recordings are widely commercially available.
 5 Nor has Internet Archive filed a notice of noncommercial use with the Copyright Office
 6 regarding any of these so-called Unlocked Recordings (or any other recordings), as the MMA
 7 requires. 17 U.S.C. § 1401(c)(1)(B).

8
 9 86. Internet Archive’s reference to the Music Modernization Act and the required
 10 “reasonable search . . . to determine that these items are not commercially available”
 11 demonstrates that Internet Archive knows it must conduct searches to see if recordings are
 12 commercially exploited as a condition to being eligible for the MMA’s safe harbor. 17 U.S.C.
 13 § 1401(c)(1)(A). Internet Archive also knows that it has not met other conditions for immunity
 14 under the MMA, such as filing a notice of noncommercial use with the U.S. Copyright Office.
 15 17 U.S.C. § 1401(c)(1)(B). Accordingly, Internet Archive knows that its use of those recordings
 16 is not authorized under the MMA and is infringing.

17
 18 87. Internet Archive’s users have also questioned the legality of Internet Archive’s
 19 conduct. One user posted on the Great 78 Project’s message forum that “[t]he records I’ve
 20 looked at have no copyright or permission information that I can see I think that a lot of
 21 people . . . are going to assume that because these recordings are freely available in the archive,
 22 that they are in the public domain. I think that archive.org ought to be concerned about this.”
 23 Jon_Corelis, *Copyright and permissions*, INTERNET ARCHIVE (Aug. 13, 2017 7:31 AM),
 24 <https://archive.org/post/1081837/copyright-and-permissions>. In 2019, another user posted, “I
 25 have the same questions/concerns.” Jwadley, *Re: Copyright and permissions*, INTERNET
 26 ARCHIVE (Feb. 8, 2019 12:38 PM), <https://archive.org/post/1081837/copyright-and-permissions>.
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1 88. Another user asked what license applied to recordings in the Great 78 Project
2 because the user wanted to upload a version of the recording to a different website.
3 Toiletrolltube, *License Information*, INTERNET ARCHIVE (May 21, 2019 1:24 AM),
4 <https://archive.org/post/1101178/license-information>. Kahle responded, “on what you can do
5 with materials from the Internet Archive, the Internet Archive are not a good place to ask. You
6 could ask a lawyer, you can look at what others do, but again, we can not offer advice. Sorry to
7 not be of concrete help.” Brewster Kahle, *Re: License Information*, INTERNET ARCHIVE (May 21,
8 2019 9:32 AM), <https://archive.org/post/1101178/license-information>.

10 89. Internet Archive has ignored the Music Modernization Act’s safe-harbor
11 requirement that the user make a good faith, reasonable search to determine whether Plaintiffs
12 are commercially exploiting the sound recordings Internet Archive has infringed. The Register
13 of Copyrights has issued regulations requiring that a reasonable search for purposes of 17 U.S.C
14 § 1401)(c) must include, among other things: (i) searching the Copyright Office's database of
15 indexed schedules listing right owners' pre-1972 sound recordings; (ii) searching Google,
16 Yahoo!, or Bing; (iii) searching at least one of the following streaming services: Amazon Music
17 Unlimited, Apple Music, Spotify, or TIDAL; (iv) searching YouTube; (v) searching
18 SoundExchange's repertoire database; (vi) searching at least one major seller of physical product,
19 namely Amazon.com. 37 CFR § 201.37(C)(1). Any search of these sources would have easily
20 revealed that Plaintiffs commercially exploit all of the Sound Recordings at Issue by making
21 them available for streaming and download at a wide variety of easily accessible commercial
22 outlets. Nor have Defendants filed any notices of noncommercial use for any of the Sound
23 Recordings at Issue. For these reasons alone, Defendants do not qualify for the Music
24 Modernization Act’s safe harbor.
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1 90. Blood and GBLP were aware at all times that Internet Archive was making
2 available the digital files Blood and GBLP were creating for anyone to download or stream for
3 free. Blood and GBLP worked closely with Internet Archive and were deeply involved in the
4 Great 78 Project. GBLP's "About Us" webpage links to the Great 78 Project. *About Us –*
5 *Projects*, GEORGE BLOOD LP, <https://www.georgeblood.com/projects> (last visited Aug. 10,
6 2023). Similarly, the front page of the Great 78 Project links to the GBLP website. THE GREAT
7 78 PROJECT, <https://great78.archive.org/> (last visited Aug. 10, 2023). According to Internet
8 Archive's IRS filings, Internet Archive has paid GBLP hundreds of thousands of dollars per year
9 for GBLP's services.
10

11 91. In 2020, Blood recorded a video for Internet Archive in which he described
12 himself as a "contributor" to the Great 78 Project. *George Blood presents The Great 78 Project*,
13 INTERNET ARCHIVE (Nov. 6, 2020), <https://archive.org/details/george-blood-great-78-project>
14 (George Blood speaking). In the video, Blood describes how, in addition to GBLP's digitization
15 work, he gives presentations at conferences to "spread the word" about the Great 78 Project. *Id.*
16 Also in the video, Blood discusses his and GBLP's involvement in the origins and strategy of the
17 Great 78 Project. *Id.* He acknowledges that "80% of the recordings in the Great 78 Project are
18 from just five labels"—Decca, Columbia, Victor, RCA Victor, and Capitol. He also references
19 the Great 78 Project's twitter feed and stated that the Great 78 Project receives 300,000 unique
20 visitors per month. *Id.*
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23 92. When the Great 78 Project tweeted, "5,600 more '78's uploaded over the last
24 week," GBLP replied, "Yahoo! Awesome job by everyone, so happy to contribute to The Great
25 78 Project!" George Blood LP (@georgebloodlp), TWITTER (Jul. 25, 2018 8:35 AM),
26 https://twitter.com/georgeblood_lp/status/1022098110653378560. In the same 2021 Twitter
27 thread where Internet Archive posted that 80% of the 250,000 sides digitized so far were
28

1 produced by one of the “Big 5” labels, Internet Archive posted a video showing GBLP’s
2 digitization process and GBLP answered questions from users regarding GBLP’s archiving
3 techniques. Internet Archive (@internetarchive), TWITTER (Apr. 25, 2021 4:54 PM),
4 <https://twitter.com/internetarchive/status/1386423512810721284>. News articles about the Great
5 78 Project’s goals and intent to make all recordings in its collection freely available quote Blood
6 extensively. *See, e.g.,* Will Pritchard, *How The Great 78 Project is saving half a million songs*
7 *from obscurity*, THE VINYL FACTORY, [https://thevinylfactory.com/features/great-78-project-](https://thevinylfactory.com/features/great-78-project-archive-interview/)
8 [archive-interview/](https://thevinylfactory.com/features/great-78-project-archive-interview/) (Aug. 18, 2017).

10 **G. Defendants’ infringement has significantly harmed Plaintiffs.**

11 93. By reproducing, streaming, and distributing Plaintiffs’ works without
12 compensating Plaintiffs, Defendants have significantly harmed Plaintiffs. The millions of
13 unauthorized infringements of Plaintiffs’ sound recordings displace authorized downloads and
14 streams that generate revenues and royalties for Plaintiffs their recording artists (or their heirs).
15 As noted, the Sound Recordings at Issue include some of the most iconic and valuable recordings
16 of all time, by some of the Twentieth Century’s most popular artists. These infringements
17 deprive Plaintiffs and those recording artists whose works they sell and license of the
18 compensation to which they are entitled. Further, Internet Archive’s offering unlimited
19 downloads and streams for free undermines the value of the recordings. Plaintiffs invest
20 considerable resources in providing and maintaining access in the public digital marketplace to
21 back catalogs of their recordings. Free availability of those recordings undermines those
22 continued investments.
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CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Infringing Reproduction against Internet Archive, Blood, and GBLP

94. Plaintiffs repeat and reallege paragraphs 1-94 above as if fully set forth herein.

95. Plaintiffs own and/or are the exclusive U.S. licensees of the exclusive rights in the Sound Recordings at Issue, which are an illustrative and non-exhaustive list of some of Plaintiffs' works infringed by Defendants through the Great 78 Project. All of the Sound Recordings at Issue have been submitted to and publicly indexed by the U.S. Copyright Office pursuant to 17 U.S.C. § 1401.

96. By the acts set forth above, Internet Archive, Blood, and GBLP have infringed Plaintiffs' exclusive rights in protected sound recordings, including but not limited to the Sound Recordings at Issue, by reproducing them in violation of 17 U.S.C. §§ 106(1) and 1401(a)(1).

97. None of Internet Archive, Blood, or GBLP have any authorization, permission, license, or consent to reproduce or otherwise use the Sound Recordings at Issue.

98. Each such infringement by Internet Archive, Blood, and GBLP constitutes a separate and distinct act of infringement.

99. Internet Archive, Blood, and GBLP's acts of infringement are willful, intentional, purposeful, and in disregard of and indifferent to the rights of Plaintiffs.

100. As a direct and proximate result of the infringements by Internet Archive, Plaintiffs are entitled to their damages and to Internet Archive, Blood, and GBLP's profits in amounts to be proven at trial, which are not currently ascertainable. Alternatively, Plaintiffs are entitled to statutory damages of up to \$150,000 for each protected sound recording infringed, or in such other amount as may be proper under 17 U.S.C. § 504(c).

101. Plaintiffs are entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

102. As a result of Internet Archive, Blood, and GBLP's conduct, Plaintiffs have sustained and continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Internet Archive, Blood, and GBLP will continue to infringe Plaintiffs' rights in Plaintiffs' sound recordings. Plaintiffs are entitled to injunctive relief to restrain and enjoin Internet Archive's continuing infringing conduct.

SECOND CAUSE OF ACTION
Infringing Reproduction and Distribution against Internet Archive

103. Plaintiffs repeat and reallege paragraphs 1-94 above as if fully set forth herein.

104. Plaintiffs own and/or are the exclusive U.S. licensees of the exclusive rights in the Sound Recordings at Issue, which are an illustrative and non-exhaustive list of some of Plaintiffs' works infringed by Defendants through the Great 78 Project. All of the Sound Recordings at Issue have been submitted to and publicly indexed by the U.S. Copyright Office pursuant to 17 U.S.C. § 1401.

105. By the acts set forth above, Internet Archive has infringed Plaintiffs' exclusive rights in protected sound recordings, including but not limited to the Sound Recordings at Issue, by reproducing and distributing them to third parties in violation of 17 U.S.C. §§ 106(2) and 1401(a)(1).

106. Internet Archive does not have any authorization, permission, license, or consent to reproduce, distribute or otherwise use the Sound Recordings at Issue.

107. Each such infringement by Internet Archive constitutes a separate and distinct act of infringement.

108. Internet Archive's acts of infringement are willful, intentional, purposeful, and in disregard of and indifferent to the rights of Plaintiffs.

109. As a direct and proximate result of the infringements by Internet Archive, Plaintiffs are entitled to their damages and to Internet Archive's profits in amounts to be proven at trial, which are not currently ascertainable. Alternatively, Plaintiffs are entitled to statutory damages of up to \$150,000 for each protected sound recording infringed, or in such other amount as may be proper under 17 U.S.C. §§ 504(c).

110. Plaintiffs are entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

111. As a result of Internet Archive's conduct, Plaintiffs have sustained and continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Internet Archive will continue to infringe Plaintiffs' rights in Plaintiffs' sound recordings. Plaintiffs are entitled to injunctive relief to restrain and enjoin Internet Archive's continuing infringing conduct.

THIRD CAUSE OF ACTION
Infringing Public Performance by Means of a Digital Audio Transmission
against Internet Archive

112. Plaintiffs repeat and reallege paragraphs 1-94 above as if fully set forth herein.

113. Plaintiffs own and/or are the exclusive U.S. licensees of the exclusive rights in the Sound Recordings at Issue, which are an illustrative and non-exhaustive list of some of Plaintiffs' works infringed by Defendants through the Great 78 Project. All of the Sound Recordings at Issue have been submitted to and publicly indexed by the U.S. Copyright Office pursuant to 17 U.S.C. § 1401.

114. By the acts set forth above, Internet Archive has infringed Plaintiffs' exclusive rights in protected sound recordings, including but not limited to the Sound Recordings at Issue, by performing them publicly by means of a digital audio transmission without authorization in violation of 17 U.S.C. §§ 106(6) and 1401(a)(1).

115. Internet Archive does not have any authorization, permission, license, or consent to perform publicly by means of a digital transmission or otherwise use the Sound Recordings at Issue.

116. Each such infringement by Internet Archive constitutes a separate and distinct act of infringement.

117. Internet Archive's acts of infringement are willful, intentional, purposeful, and in disregard of and indifferent to the rights of Plaintiffs.

118. As a direct and proximate result of the infringements by Internet Archive, Plaintiffs are entitled to their damages and to Internet Archive's profits in amounts to be proven at trial, which are not currently ascertainable. Alternatively, Plaintiffs are entitled to statutory damages of up to \$150,000 for each protected sound recording infringed, or in such other amount as may be proper under 17 U.S.C. §§ 504(c).

119. Plaintiffs are entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

120. As a result of Internet Archive's conduct, Plaintiffs have sustained and continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Internet Archive will continue to infringe Plaintiffs' rights in Plaintiffs' sound recordings. Plaintiffs are entitled to injunctive relief to restrain and enjoin Internet Archive's continuing infringing conduct.

FOURTH CAUSE OF ACTION

Contributory Infringement against Internet Archive

121. Plaintiffs repeat and reallege paragraphs 1-94 above as if fully set forth herein.

122. Plaintiffs own and/or are the exclusive U.S. licensees of the exclusive rights in the Sound Recordings at Issue, which are an illustrative and non-exhaustive list of some of Plaintiffs' works infringed by Defendants through the Great 78 Project. All of the Sound

1 Recordings at Issue have been submitted to and publicly indexed by the U.S. Copyright Office
2 pursuant to 17 U.S.C. § 1401.

3 123. By the acts set forth above, Plaintiffs' exclusive rights in protected sound
4 recordings, including but not limited to the Sound Recordings at Issue, have been infringed by
5 unlawful reproductions and/or public performances by means of a digital audio transmission of
6 Plaintiffs' protected works without authorization in violation of 17 U.S.C. §§ 106 and
7 1401(a)(1).
8

9 124. The reproductions and/or public performances by means of a digital audio
10 transmission described herein lack any authorization, permission, license, or consent to
11 reproduce, distribute, perform publicly by means of a digital audio transmission, or otherwise use
12 the Sound Recordings at Issue.
13

14 125. Internet Archive is contributorily liable for the direct infringements described
15 herein. As a result of its close involvement in and funding and oversight of Blood's and GBLP's
16 reproductions, Internet Archive has actual knowledge, or reason to know, of Blood's and
17 GBLP's infringing activity. By providing Blood and GBLP the 78 rpm discs embodying
18 Plaintiffs' sound recordings to reproduce, Internet Archive knows specifically the works Blood
19 and GBLP are reproducing. Internet Archive intends and knows that Blood and GBLP continue
20 to reproduce Plaintiffs' protected sound recordings without authorization. By providing Blood
21 and GBLP the 78 rpm discs to reproduce, and instructing and working closely with Blood and
22 GBLP to reproduce Plaintiffs' protected sound recordings without authorization, including the
23 Sound Recordings at Issue, Internet Archive facilitates, encourages, and materially contributes to
24 Blood and GBLP's direct infringement of Plaintiffs' protected sound recordings.
25

26 126. By virtue of overseeing and funding Blood and GBLP's reproductions, Internet
27 Archive has the ability to stop Blood and GBLP's infringement of Plaintiffs' protected sound
28

1 recordings. Internet Archive fails to do so, and instead purposefully and knowingly continues to
2 facilitate, encourage, and materially contribute to Blood and GBLP's infringement as described
3 herein. By contracting with and instructing Blood and GBLP to reproduce Plaintiffs' protected
4 sound recordings without authorization, Internet Archive induces Blood and GBLP's infringing
5 reproductions.

6
7 127. By providing a platform where Plaintiffs' protected sound recordings can be
8 downloaded and streamed, and widely advertising those capabilities, Internet Archive has actual
9 knowledge, or reason to know, of infringing activity. Internet Archive intends and knows that
10 Plaintiffs' protected sound recordings will continue to be reproduced and performed publicly by
11 means of a digital audio transmission without authorization. By advertising specific sound
12 recordings on its social media accounts, complete with information including the record
13 company that released the recording, Internet Archive has actual knowledge of the infringements
14 of specific works. By providing a platform where Plaintiffs' protected sound recordings are
15 reproduced and performed publicly by means of a digital audio transmission without
16 authorization, Internet Archive facilitates, encourages, and materially contributes to the direct
17 infringement of Plaintiffs' protected sound recordings.

18
19 128. By virtue of providing the facilities that enable infringement, Internet Archive has
20 the ability to stop the reproduction and public performance by means of a digital audio
21 transmission of Plaintiffs' protected sound recordings. Internet Archive fails to do so, and
22 instead purposefully and knowingly continues to facilitate, encourage, and materially contribute
23 to the infringement as described herein.

24
25 129. Each infringement of Plaintiffs' protected sound recordings constitutes a separate
26 and distinct act of infringement.

130. Internet Archive's acts of infringement are willful, intentional, purposeful, and in disregard of and indifferent to the rights of Plaintiffs.

131. As a direct and proximate result of the infringements by Internet Archive, Plaintiffs are entitled to their damages and to Internet Archive's profits in amounts to be proven at trial, which are not currently ascertainable. Alternatively, Plaintiffs are entitled to statutory damages of up to \$150,000 for each protected sound recording infringed, or in such other amount as may be proper under 17 U.S.C. § 504(c).

132. Plaintiffs are entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

133. As a result of Internet Archive's conduct, Plaintiffs have sustained and continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Internet Archive will continue to infringe Plaintiffs' rights in Plaintiffs' sound recordings. Plaintiffs are entitled to injunctive relief to restrain and enjoin Internet Archive's continuing infringing conduct.

134. Plaintiffs plead this cause of action in the alternative, in the event that Internet Archive is held not liable for directly infringing Plaintiffs' exclusive rights in in protected sound recordings, including but not limited to the Sound Recordings at Issue.

FIFTH CAUSE OF ACTION

Inducement of Infringement against Internet Archive

135. Plaintiffs repeat and reallege paragraphs 1-94 above as if fully set forth herein.

136. Plaintiffs own and/or are the exclusive U.S. licensees of the exclusive rights in the Sound Recordings at Issue, which are an illustrative and non-exhaustive list of some of Plaintiffs' works infringed by Defendants through the Great 78 Project. All of the Sound Recordings at Issue have been submitted to and publicly indexed by the U.S. Copyright Office pursuant to 17 U.S.C. § 1401.

1 137. By the acts set forth above, Plaintiffs' exclusive rights in protected sound
2 recordings, including but not limited to the Sound Recordings at Issue, have been infringed by
3 the unlawful reproductions and/or public performances by means of a digital audio transmission
4 of Plaintiffs' protected works without authorization in violation of 17 U.S.C. §§ 106 and
5 1401(a)(1).
6

7 138. The reproductions and/or public performances by means of a digital audio
8 transmission described herein lack any authorization, permission, license, or consent to
9 reproduce, distribute, perform publicly by means of a digital audio transmission, or otherwise use
10 the Sound Recordings at Issue.

11 139. Internet Archive is liable for inducing the direct infringements described herein.
12 Internet Archive operates the Great 78 Project with the object of promoting the Great 78 Project's
13 use to infringe the protected sound recordings of Plaintiffs and others. Internet Archive's
14 inducement of infringement is obvious from, among other things, Internet Archive's publishing a
15 separate webpage for each sound recording, where the page's primary functionality is to enable
16 streaming and downloading of that sound recording, and Internet Archive's advertising, via its
17 social media platforms and otherwise, the Great 78 Project as a site to stream and download
18 sound recordings. Through these activities, among others, Internet Archive knowingly and
19 intentionally entices, persuades, and causes streaming and downloading, without authorization,
20 of Plaintiffs' protected sound recordings, including but not limited to the Sound Recordings at
21 Issue.
22

23 140. Each infringement of Plaintiffs' protected sound recordings constitutes a separate
24 and distinct act of infringement.
25

26 141. Internet Archive's acts of infringement are willful, intentional, purposeful, and in
27 disregard of and indifferent to the rights of Plaintiffs.
28

1 142. As a direct and proximate result of the infringements by Internet Archive,
2 Plaintiffs are entitled to their damages and to Internet Archive's profits in amounts to be proven
3 at trial, which are not currently ascertainable. Alternatively, Plaintiffs are entitled to statutory
4 damages of up to \$150,000 for each protected sound recording infringed, or in such other amount
5 as may be proper under 17 U.S.C. § 504(c).
6

7 143. Plaintiffs are entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

8 144. As a result of Internet Archive's conduct, Plaintiffs have sustained and continue
9 to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy
10 at law. Unless enjoined and restrained by this Court, Internet Archive will continue to infringe
11 Plaintiffs' rights in Plaintiffs' sound recordings. Plaintiffs are entitled to injunctive relief to
12 restrain and enjoin Internet Archive's continuing infringing conduct.
13

14 145. Plaintiffs plead this cause of action in the alternative, in the event that Internet
15 Archive is held not liable for directly infringing Plaintiffs' exclusive rights in protected sound
16 recordings, including but not limited to the Sound Recordings at Issue.

17 **SIXTH CAUSE OF ACTION**

18 **Vicarious Infringement against Internet Archive**

19 146. Plaintiffs repeat and reallege paragraphs 1-94 above as if fully set forth herein.

20 147. Plaintiffs own and/or are the exclusive U.S. licensees of the exclusive rights in the
21 Sound Recordings at Issue, which are an illustrative and non-exhaustive list of some of
22 Plaintiffs' works infringed by Defendants through the Great 78 Project. All of the Sound
23 Recordings at Issue have been submitted to and publicly indexed by the U.S. Copyright Office
24 pursuant to 17 U.S.C. § 1401.
25

26 148. By the acts set forth above, Plaintiffs' exclusive rights in protected sound
27 recordings, including but not limited to the Sound Recordings at Issue, have been infringed by
28

1 unlawful reproductions and/or performing public performances by means of a digital audio
2 transmission of Plaintiffs' protected works without authorization in violation of 17 U.S.C. §§ 106
3 and 1401(a)(1).

4 149. The reproductions and/or public performances by means of a digital audio
5 transmission described herein lack any authorization, permission, license, or consent to
6 reproduce or perform publicly by means of a digital audio transmission, or otherwise use the
7 Sound Recordings at Issue.

8 150. Internet Archive is vicariously liable for the direct infringements described herein.
9 Internet Archive has the legal and practical right and ability to supervise and control
10 infringement because Internet Archive can choose whether to allow Plaintiffs' protected sound
11 recordings to be streamed and downloaded from its website. By virtue of providing the platform
12 that enables infringement, Internet Archive has had at all relevant times the ability to stop the
13 reproduction and public performance by means of a digital audio transmission of Plaintiffs'
14 protected sound recordings by withdrawing those facilities.

15 151. Internet Archive derives an obvious and direct financial benefit from the
16 infringement because the ability to use Internet Archive to illegally download Plaintiffs'
17 copyrighted works serves to draw a much greater audience to Internet Archive's website.
18 Recognizing that the availability of Plaintiffs' protected sound recordings is a draw to its site,
19 Internet Archive widely advertises that availability, both through its social media platforms and
20 otherwise. Internet Archive uses the availability of Plaintiffs' protected sound recordings and the
21 increased attention that availability attracts to solicit increased donations of both money and of
22 additional 78 rpm records to add to its collections. Further, Internet Archive derives a direct
23 financial benefit by avoiding paying licensing fees to Plaintiffs it would otherwise have been
24 required to pay in order to exploit Plaintiffs' recordings.

1 152. Each infringement of Plaintiffs' protected sound recordings constitutes a separate
2 and distinct act of infringement.

3 153. Internet Archive's acts of infringement are willful, intentional, purposeful, and in
4 disregard of and indifferent to the rights of Plaintiffs.

5 154. As a direct and proximate result of the infringements by Internet Archive,
6 Plaintiffs are entitled to their damages and to Internet Archive's profits in amounts to be proven
7 at trial, which are not currently ascertainable. Alternatively, Plaintiffs are entitled to statutory
8 damages of up to \$150,000 for each protected sound recording infringed, or in such other amount
9 as may be proper under 17 U.S.C. § 504(c).
10

11 155. Plaintiffs are entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

12 156. As a result of Internet Archive's conduct, Plaintiffs have sustained and continue
13 to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy
14 at law. Unless enjoined and restrained by this Court, Internet Archive will continue to infringe
15 Plaintiffs' rights in Plaintiffs' sound recordings. Plaintiffs are entitled to injunctive relief to
16 restrain and enjoin Internet Archive's continuing infringing conduct.
17

18 157. Plaintiffs plead this cause of action in the alternative, in the event that Internet
19 Archive is held not liable for directly infringing Plaintiffs' exclusive rights in protected sound
20 recordings, including but not limited to the Sound Recordings at Issue.
21

22 **SEVENTH CAUSE OF ACTION**
23 **Contributory Infringement against Kahle**

24 158. Plaintiffs repeat and reallege paragraphs 1-94 above as if fully set forth herein.

25 159. Plaintiffs own and/or are the exclusive U.S. licensees of the exclusive rights in the
26 Sound Recordings at Issue, which are an illustrative and non-exhaustive list of some of
27 Plaintiffs' works infringed by Defendants through the Great 78 Project. All of the Sound
28

1 Recordings at Issue have been submitted to and publicly indexed by the U.S. Copyright Office
2 pursuant to 17 U.S.C. § 1401.

3 160. By the acts set forth above, Plaintiffs' exclusive rights in protected sound
4 recordings, including but not limited to the Sound Recordings at Issue, have been infringed by
5 the unlawful reproduction, distribution, and/or public performance by means of a digital audio
6 transmission of Plaintiffs' protected works without authorization in violation of 17 U.S.C. §§ 106
7 and 1401(a)(1).
8

9 161. The reproductions, distributions, and/or public performances by means of a digital
10 audio transmission described herein lack any authorization, permission, license, or consent to
11 reproduce, distribute, perform publicly by means of a digital audio transmission, or otherwise use
12 the Sound Recordings at Issue.
13

14 162. Kahle is contributorily liable for the direct infringements described herein. As a
15 result of his close involvement in and oversight of Internet Archive's operations, Kahle has
16 actual knowledge, or reason to know, of the infringing activity. Kahle intends and knows that
17 Plaintiffs' protected sound recordings continue to be copied, distributed, and performed publicly
18 by means of a digital audio transmission without authorization. By managing Internet Archive's
19 operations and directing Internet Archive's infringing conduct, Kahle facilitates, induces,
20 encourages, and materially contributes to the direct infringement of Plaintiffs' sound recordings.
21

22 163. By virtue of his dominant leadership role within Internet Archive, Kahle has the
23 ability to direct the cessation of copying, distributing, and publicly performing by means of a
24 digital audio transmission Plaintiffs' protected sound recordings. Kahle fails to do so, and
25 instead purposefully and knowingly continues to facilitate, induce, encourage, and materially
26 contribute to the infringement as described herein.
27
28

1 164. Each infringement of Plaintiffs' protected sound recordings constitutes a separate
2 and distinct act of infringement.

3 165. Kahle's acts of infringement are willful, intentional, purposeful, and in disregard
4 of and indifferent to the rights of Plaintiffs.

5 166. As a direct and proximate result of the infringements by Kahle, Plaintiffs are
6 entitled to their damages and to Kahle's profits in amounts to be proven at trial, which are not
7 currently ascertainable. Alternatively, Plaintiffs are entitled to statutory damages of up to
8 \$150,000 for each protected sound recording infringed, or in such other amount as may be proper
9 under 17 U.S.C. § 504(c).
10

11 167. Plaintiffs are entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

12 168. As a result of Kahle's conduct, Plaintiffs have sustained and continue to sustain
13 substantial, immediate, and irreparable injury, for which there is no adequate remedy at law.
14 Unless enjoined and restrained by this Court, Kahle will continue to infringe Plaintiffs' rights in
15 Plaintiffs' sound recordings. Plaintiffs are entitled to injunctive relief to restrain and enjoin
16 Kahle's continuing infringing conduct.
17

18 **EIGHTH CAUSE OF ACTION**
19 **Contributory Infringement against the Foundation**

20 169. Plaintiffs repeat and reallege paragraphs 1-94 above as if fully set forth herein.

21 170. Plaintiffs own and/or are the exclusive U.S. licensees of the exclusive rights in the
22 Sound Recordings at Issue, which are an illustrative and non-exhaustive list of some of
23 Plaintiffs' works infringed by Defendants through the Great 78 Project. All of the Sound
24 Recordings at Issue have been submitted to and publicly indexed by the U.S. Copyright Office
25 pursuant to 17 U.S.C. § 1401.
26
27
28

1 171. By the acts set forth above, Plaintiffs' exclusive rights in protected sound
2 recordings, including but not limited to the Sound Recordings at Issue, have been infringed by
3 the unlawful reproduction, distribution, and/or public performance by means of a digital audio
4 transmission of Plaintiffs' protected works without authorization in violation of 17 U.S.C. §§ 106
5 and 1401(a)(1).
6

7 172. The reproductions, distributions, and/or public performances by means of a digital
8 audio transmission described herein lack any authorization, permission, license, or consent to
9 reproduce, distribute, perform publicly by means of a digital audio transmission, or otherwise use
10 the Sound Recordings at Issue .
11

12 173. The Foundation is contributorily liable for the direct infringements described
13 herein. By virtue of Kahle's roles as both Digital Librarian and Chair of the Board of Internet
14 Archive and as President of the Foundation, and Kahle's close involvement in the affairs of both
15 Internet Archive and the Foundation, the Foundation has actual knowledge, or reason to know, of
16 the infringing activity. The Foundation intends and knows that Plaintiffs' protected sound
17 recordings are reproduced, distributed, and performed publicly by means of a digital audio
18 transmission without authorization. The Foundation facilitates, encourages, and materially
19 contributes to the direct infringement of Plaintiffs' protected sound recordings by financially
20 sponsoring and specifically funding the infringement, all while knowing and intending that such
21 funds are used to infringe Plaintiffs' protected sound recordings.
22

23 174. Each infringement of Plaintiffs' protected sound recordings constitutes a separate
24 and distinct act of infringement.

25 175. The Foundation's acts of infringement are willful, intentional, purposeful, and in
26 disregard of and indifferent to the rights of Plaintiffs.
27
28

1 176. As a direct and proximate result of the infringements by the Foundation, Plaintiffs
2 are entitled to their damages and to the Foundation's profits in amounts to be proven at trial,
3 which are not currently ascertainable. Alternatively, Plaintiffs are entitled to statutory damages
4 of up to \$150,000 for each protected sound recording infringed, or in such other amount as may
5 be proper under 17 U.S.C. § 504(c).
6

7 177. Plaintiffs are entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

8 178. As a result of the Foundation's conduct, Plaintiffs have sustained and continue to
9 sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at
10 law. Unless enjoined and restrained by this Court, the Foundation will continue to infringe
11 Plaintiffs' rights in Plaintiffs' sound recordings. Plaintiffs are entitled to injunctive relief to
12 restrain and enjoin the Foundation's continuing infringing conduct.
13

14 **NINTH CAUSE OF ACTION**
 Contributory Infringement against Blood and GBLP

15 179. Plaintiffs repeat and reallege paragraphs 1-94 above as if fully set forth herein.

16 180. Plaintiffs own and/or are the exclusive U.S. licensees of the exclusive rights in the
17 Sound Recordings at Issue, which are an illustrative and non-exhaustive list of some of
18 Plaintiffs' works infringed by Defendants through the Great 78 Project. All of the Sound
19 Recordings at Issue have been submitted to and publicly indexed by the U.S. Copyright Office
20 pursuant to 17 U.S.C. § 1401.
21

22 181. By the acts set forth above, Plaintiffs' exclusive rights in protected sound
23 recordings, including but not limited to the Sound Recordings at Issue, have been infringed by
24 the unlawful reproduction, distribution, and/or public performance by means of a digital audio
25 transmission of Plaintiffs' protected works without authorization in violation of 17 U.S.C. §§ 106
26 and 1401(a)(1).
27
28

1 182. The reproductions, distributions, and/or public performances by means of a digital
2 audio transmission described herein lack any authorization, permission, license, or consent to
3 reproduce, distribute, perform publicly by means of a digital audio transmission, or otherwise use
4 the Sound Recordings at Issue.

5 183. Blood and GBLP are contributorily liable for the direct infringements described
6 herein. As a result of Blood and GBLP's close working relationship with Internet Archive,
7 Blood and GBLP have actual knowledge, or reason to know, of the infringing activity. Blood
8 and GBLP intend and know that Plaintiffs' protected sound recordings are reproduced,
9 distributed, and performed publicly by means of a digital transmission without authorization.
10 Blood and GBLP facilitate, encourage, and materially contribute to the direct infringement of
11 Plaintiffs' sound recordings by copying physical 78 rpm records into digital files that can be
12 reproduced, distributed, and publicly performed by means of a digital audio transmission.
13

14 184. Each infringement of Plaintiffs' protected sound recordings constitutes a separate
15 and distinct act of infringement.
16

17 185. Blood and GBLP's acts of infringement are willful, intentional, purposeful, and in
18 disregard of and indifferent to the rights of Plaintiffs.

19 186. As a direct and proximate result of the infringements by Blood and GBLP,
20 Plaintiffs are entitled to their damages and to Blood and GBLP's profits in amounts to be proven
21 at trial, which are not currently ascertainable. Alternatively, Plaintiffs are entitled to statutory
22 damages of up to \$150,000 for each protected sound recording infringed, or in such other amount
23 as may be proper under 17 U.S.C. § 504(c).
24

25 187. Plaintiffs are entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

26 188. As a result of Blood and GBLP's conduct, Plaintiffs have sustained and continue
27 to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy
28

at law. Unless enjoined and restrained by this Court, Blood and GBLP will continue to infringe Plaintiffs' rights in Plaintiffs' sound recordings. Plaintiffs are entitled to injunctive relief to restrain and enjoin Blood and GBLP's continuing infringing conduct.

TENTH CAUSE OF ACTION
Vicarious Infringement against Blood

189. Plaintiffs repeat and reallege paragraphs 1-94 above as if fully set forth herein.

190. Plaintiffs own and/or are the exclusive U.S. licensees of the exclusive rights in the Sound Recordings at Issue, which are an illustrative and non-exhaustive list of some of Plaintiffs' works infringed by Defendants through the Great 78 Project. All of the Sound Recordings at Issue have been submitted to and publicly indexed by the U.S. Copyright Office pursuant to 17 U.S.C. § 1401.

191. By the acts set forth above, GBLP has infringed Plaintiffs' exclusive rights in protected sound recordings, including but not limited to the Sound Recordings at Issue, by reproducing them in violation of 17 U.S.C. §§ 106(1) and 1401(a)(1).

192. Neither GBLP nor Blood has any authorization, permission, license, or consent to reproduce or otherwise use the Sound Recordings at Issue.

193. Blood is vicariously liable for the direct infringements of GBLP described herein. As President and owner of GBLP, Blood has had at all relevant times the right and ability to supervise the infringing conduct of GBLP and its employees and to direct GBLP and its employees to cease infringing. Further, as the owner of GBLP, Blood receives a direct financial benefit from GBLP's infringement, as GBLP has been paid hundreds of thousands of dollars to reproduce Plaintiffs' protected sound recordings, and profits from those fees flow through to Blood.

194. Each infringement of Plaintiffs' protected sound recordings constitutes a separate and distinct act of infringement.

195. Blood's acts of infringement are willful, intentional, purposeful, and in disregard of and indifferent to the rights of Plaintiffs.

196. As a direct and proximate result of the infringements by Blood, Plaintiffs are entitled to their damages and to Blood's profits in amounts to be proven at trial, which are not currently ascertainable. Alternatively, Plaintiffs are entitled to statutory damages of up to \$150,000 for each protected sound recording infringed, or in such other amount as may be proper under 17 U.S.C. § 504(c).

197. Plaintiffs are entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

198. As a result of Blood's conduct, Plaintiffs have sustained and continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Blood will continue to infringe Plaintiffs' rights in Plaintiffs' sound recordings. Plaintiffs are entitled to injunctive relief to restrain and enjoin Blood's continuing infringing conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request a judgment in their favor and against Defendants as follows:

A. For a declaration that Defendants have willfully infringed Plaintiffs' protected sound recordings, including the Sound Recordings at Issue;

B. For statutory damages pursuant to 17 U.S.C. § 504(c), in an amount up to the maximum provided by law, arising from Defendants' willful violations of Plaintiffs' rights, including in an amount up to \$150,000 per work infringed; or, in the alternative, at Plaintiffs' election, Plaintiffs' actual damages pursuant to 17 U.S.C. §

504(b), including Defendants' profits from infringement, in an amount to be proven at trial;

- C. For such equitable relief under Title 17, Title 28, and/or the Court's inherent authority as is necessary to prevent or restrain infringement of Plaintiffs' protected sound recordings, including a permanent injunction requiring that Defendants and their officers, agents, servants, employees, attorneys, directors, successors, assigns, licensees, and all others in active concert or participation with any of them, cease infringing, or causing, aiding, enabling, facilitating, encouraging, promoting, inducing, or materially contributing to or participating in the infringement of any of Plaintiffs' exclusive rights under federal law, including without limitation in the sound recordings in Exhibit A;
- D. For an award of Plaintiffs' costs and disbursements in this action, including reasonable attorney's fees, pursuant to 17 U.S.C. § 505;
- E. For an award of pre-judgment and post-judgment interest, to the fullest extent available, on any monetary award made part of the judgment against Defendants; and
- F. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs hereby respectfully demand a jury trial on all issues so triable in this action.

Dated: March 12, 2024

Respectfully submitted,

/s/ Matthew J. Oppenheim

Matthew J. Oppenheim

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